

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
San Francisco Division

GEORGE W. WOOLLEY, et al.,

Plaintiffs,

v.

YGRENE ENERGY FUND, INC., et al.,

Defendants.

Case No. 17-cv-01258-LB

ORDER DISMISSING PARTY

Re: ECF No. 73

INTRODUCTION

Plaintiff Michael G. Pekel has not responded to the court's order requiring him to appear in person or by counsel and show cause why the court should not dismiss his case for failure to prosecute it.¹ He did not appear at the show-cause hearing on February 8, 2018.² The court now dismisses his case for his failure to prosecute it.

STATEMENT

Plaintiffs' counsel has been unable to contact Mr. Pekel since September 2017.³ On September 27, 2017, Plaintiffs' counsel Manuel Hiraldo sent an email to Mr. Pekel to schedule his deposition,

¹ Order – ECF No. 73.

² Minute Entry – ECF No. 77.

³ Motion to Withdraw – ECF No. 69 at 3.

and Mr. Pikel responded that he was available during the proposed date and time.⁴ On October 4, 2017, Mr. Hiraldo “emailed a copy of the notice of deposition to Mr. Pikel” and asked him to confirm receipt.⁵ Mr. Pikel did not respond.⁶ Mr. Hiraldo followed up with Mr. Pikel via email, cell phone, and text message between October 9 and October 27, 2017.⁷ On November 2, 2017, Mr. Hiraldo sent a letter and e-mail to Mr. Pikel “regarding whether he wished to continue perusing his claims, and [Mr. Hiraldo’s] intent to terminate [the] attorney-client relationship if he did not respond.”⁸ Mr. Pikel did not respond.⁹

At the motion-to-dismiss hearing on November 2, 2017, plaintiffs’ counsel first raised their communication issues with Mr. Pikel.¹⁰ The court also discussed the issue with the parties at the case-management conference on December 14, 2017.¹¹ The court set a further case-management conference for January 18, 2018, where counsel discussed their continued efforts to contact Mr. Pikel.

On January 9, 2018, plaintiffs’ counsel moved to withdraw as counsel for Mr. Pikel.¹² Plaintiffs’ counsel served Mr. Pikel with a copy of the motion.¹³ The court held a hearing on January 18, 2018.¹⁴ Mr. Pikel did not appear. The court granted the motion and ordered Mr. Pikel to appear in person or through counsel on February 8, 2018 to show why his case should not be

⁴ Hiraldo Decl. – ECF No. 69-1 at 2 (¶ 2).

⁵ *Id.* (¶ 4).

⁶ *Id.* (¶ 5).

⁷ *Id.* (¶¶ 5–7).

⁸ *Id.* (¶ 8).

⁹ *Id.*

¹⁰ Joint Case Management Statement – ECF No. 59 at 7.

¹¹ Joint Case Management Statement – ECF No. 71 at 2.

¹² Motion to Withdraw – ECF No. 69 at 1.

¹³ *Id.* at 5; Hiraldo Decl. – ECF No. 69-1 at 2 (¶ 8).

¹⁴ Minute Entry – ECF No. 72.

1 dismissed for his failure to prosecute it.¹⁵ Plaintiffs' counsel served Mr. Pekel with a copy of the
2 order.¹⁶

3 On February 8, 2018, the court held the show-cause hearing.¹⁷ Mr. Pekel did not appear.
4

5 **ANALYSIS**

6 The court's January 18, 2018 order¹⁸ described what the rules require of Mr. Pekel, including
7 that failure to prosecute the case may result in both monetary and terminating sanctions.¹⁹ The
8 court incorporates that order by this reference and attaches it as an exhibit. Mr. Pekel became
9 unreachable and stopped communicating with his lawyers.²⁰ The court warned Mr. Pekel about the
10 consequences of not appearing at the order to show cause hearing.²¹ Mr. Pekel's former counsel
11 served him with notice of the hearing.²² Still, Mr. Pekel did not appear.

12 On this record, and for the reasons described in the January 18 order, the court dismisses Mr.
13 Pekel's case. Mr. Pekel has failed to prosecute his case. The court warned him that if he did not
14 appear, the court would dismiss the case for failure to prosecute it. Mr. Pekel has not shown cause
15 for his lack of participation and diligence.

16 Under the circumstances, the court declines to impose monetary sanctions.
17
18
19
20
21
22

23 ¹⁵ Order – ECF No. 73.

24 ¹⁶ Certificate of Service – ECF No. 76.

25 ¹⁷ Minute Entry – No. 77.

26 ¹⁸ Order – ECF No. 73.

27 ¹⁹ *Id.* at 4–7.

28 ²⁰ Hiraldo Decl. – ECF No. 69-1 at 2 (¶ 4–8).

²¹ Order – ECF No. 73 at 4–7.

²² Certificate of Service – ECF No. 76.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CONCLUSION

The court dismisses Mr. Pekel’s case with prejudice for his failure to prosecute it. The court directs plaintiffs’ counsel to serve Mr. Pekel with a copy of this order and the court’s separate judgment and to file proof of service by February 22, 2018.

IT IS SO ORDERED.

Dated: February 8, 2018



LAUREL BEELER
United States Magistrate Judge